HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT PETITION No. 3040 OF 2007

Between:

Vishnu Murthy & others

... Petitioners

AND

The Municipal Corporation of Hyderabad
Rep. by its Commissioner

... Respondents

: ORDER :

Counsel for the petitioners : Shri T.Sudhakar Reddy

Dated: 26.03.2007

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Per C.V.Nagarjuna Reddy, J

In this petition, the petitioners have prayed for quashing notices dated 02.02.2007 issued by the Commissioner, Municipal Corporation of Hyderabad whereby, while rejecting the applications made by them for allotment of alternative sites, he directed them to remove the encroachments from public places.

The petitioners are petty vendors carrying on their small businesses on the pavements of Kothi area. When the Municipal Corporation of Hyderabad (for short, 'the Corporation) issued notices under Section 402 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') for removing the encroachments, they filed W.P.No.645 of 2006, which was disposed of by this Court on 05.01.2007 in the light of the order passed in Writ Petition No.20228 of 2005 and batch.

After the disposal of Writ Petition No.645 of 2006, the petitioners made separate representations for allotment of alternative sites and issue of identity cards and the same were rejected on the ground that they are not hawkers and are running business on pavements/footpaths, which is obstructing the public.

In the affidavit filed by petitioner No.1, it has been averred that the reason assigned by the respondent for refusing to

entertain their prayer for allotment of alternative sites is legally untenable and discriminatory and the direction given for removing them from footpaths and pavements will result in violation of their fundamental right to life guaranteed under Article 21 of the Constitution.

In the counter affidavit filed by Sri K. Dhananjaya Reddy, Additional Commissioner (Planning), Municipal Corporation of Hyderabad, it has been averred that the Corporation has issued notices under Section 402 of the Act to those who are occupying footpaths and causing obstruction and inconvenience to the people. In paragraph 4 of his affidavit, Sri K. Dhananjaya Reddy has averred as under:

> "4. In reply to paras 6 and 7 of the affidavit, it is a fact that the petitioners have made an application dated 21-7-2006 to this respondent. It is further submitted that this respondent has already received 200 applications and out of the 200, this respondent has already allotted alternative sites for 136 vendors. It is relevant to submit that as per the assurance made by the Special Government Pleader, the respondent Corporation has considered each and every application but due to non-availability of sites, the alternative sites could not be allotted to some of the petty vendors. It is further submitted that as per the directions of this Hon'ble Court priority has been given to Koti Book Shops while allotting the alternative sites. Therefore, it is false to state that this respondent has served the notices without considering their application is false and the same is denied. It is further submitted that the petitioners' in their representation dated 21-7-2006 have requested this respondent to consider them to accommodate in the earmarked hawking zones along with others. It is submitted that identity cards have been issued to all the hawkers of the twin cities who approached the respondent

Corporation and they were allowed to do their business activities only on the pushcarts in the specified zones. Since the petitioners have requested to consider their accommodation in the hawkers policy, as such they are not the hawkers. In view of the same, this respondent has rejected their application and the reason has been given to the petitioners in the impugned notices."

Sri T. Sudhakar Reddy assailed the impugned notices by arguing that the reason assigned by the respondent for refusing allotment of alternative sites to the petitioners is totally extraneous and the direction given for removing the business activities from footpaths and pavements is violative of their fundamental right to equality as also the right to life guaranteed under Article 21 of the Constitution. He submitted that the petitioners had given individual undertakings for vacating the places unauthorisedly occupied by them by believing that the respondent will provide alternative places, but without considering their representations in a correct perspective, the respondent has issued the impugned notices. Learned counsel submitted that if the book sellers, who were unauthorisedly occupying the public places in Kothi area could be accommodated at an alternative place, there could be no justification to give similar benefit to the petitioners.

Sri A. Satya Prasad, learned Special Government Pleader, on the basis of the averments contained in the affidavit filed on behalf of the respondent submitted that book sellers were accommodated at an alternative site in accordance with the policy of the Corporation and as the petitioners do not fall in the same category, they cannot claim parity. He further submitted that now

no site is available for accommodating the petitioners and, therefore, the Corporation cannot entertain the petitioners' prayer. Sri Satya Prasad defended the impugned notices by arguing that the petitioners do fall in the category of hawkers and they cannot be allowed to occupy the pavements and footpaths. Lastly, he submitted that if the petitioners approach the Corporation for being allowed to work in the hawkers zone, their request will be considered in accordance with law.

We have given serious thought to the respective arguments. Since the petitioners have not filed rejoinder to the counter affidavit, we shall proceed on the premise that they do not fall in the category of hawkers. As a matter of fact, they have come forward with the plea that they have been doing business by occupying footpaths. It is common knowledge that with the ever growing population and manifold increase in traffic, footpath vending has become a major traffic hurdle, forcing the pedestrians to walk on the road meant for vehicular traffic. With the limited space available, it is not possible for the respondent-Corporation to provide alternative sites to every petty vendor doing business on footpaths. Indeed, the petitioners have not produced any material before the Court to show that alternative places are available for allotment to them. Therefore, no direction can be issued to the respondent-Corporation to accommodate the petitioners by providing them with alternative sites and the impugned notices cannot be termed as illegal.

For the reasons stated above, the writ petition is dismissed. However, keeping in view the statement made by Sri

A. Satya Prasad, we direct that if the petitioners' or anyone of them make application for grant of hawkers licence, then such application shall be considered and disposed of by the competent authority of the Corporation within two weeks keeping in view the hawkers policy framed in furtherance of the directions given by the Court in Writ Petition No.20228 of 2005.

C.V.NAGARJUNA REDDY,J

G.S.SINGHVI, CJ

Date:26.03.2007
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